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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Application Number: 10/706,848
Filing Date: November 12, 2003
Appellant(s): HUGHES ET AL.

Matthew S. Anderson (Reg. No. 39,093)
<u>For Appellants</u>

EXAMINER'S ANSWER

This is in response to the appeal brief filed September 25, 2008, appealing from the Office action

mailed March 21, 2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellants' statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellants' statement of the grounds of rejection to be reviewed on appeal is substantially correct. However, upon further review, one ground of rejection is withdrawn.

WITHDRAWN REJECTIONS

The following grounds of rejection are not presented for review on appeal because they have been withdrawn by the examiner: The rejection of claims 8-10 under 35 U.S.C. § 112, second paragraph, is withdrawn.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

| 6,112,225 | KRAFT et al. | 8-2000 |
| 6,360,268 | SILVA et al. | 3-2002 |

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

9.1   Claims 11-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 11 is apparently missing the word "receive" at the beginning of line 3. As presently written, claim 11 recites in part, ". . . configured to executable code from a server . . . ," which simply makes no sense. Appellants have agreed that the word "receive" should have been added to make the language of claim 11 parallel to that of claim 4, (Brief 18), and this is how the examiner has interpreted the claim in the rejection based on prior art. (Final Rejection 4.)

9.2   Claims 1-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Nos. 6,112,225 (Kraft et al.) and 6,360,268 (Silva et al.).

Regarding claim 1, *Kraft et al.* discloses:

receiving a [] request (*see, e.g., Kraft et al.* at col. 9, lines 1-27);

sending executable program code, corresponding to the [] request, to a client system (*see, e.g., Kraft et al.* at col. 9, lines 1-27);

receiving a response from the client system indicating that the client system will perform a [task], and indicating that the client system was not being actively used when the executable program code was sent (*see, e.g., Kraft et al.* at col. 9, lines 1-27).

Kraft et al. discloses a task distribution process as described above, but fails to expressly

disclose the distributed task being a testing task. However, in a similar task distribution process,

Silva et al. teaches the distribution of testing tasks in order to achieve more efficient testing. *See,*

e.g., Silva et al. at col. 1, lines 22-48; col. 2, line 63, through col. 3, line 17. Therefore, it would

have been obvious to one of ordinary skill in the art at the time the invention was made to

incorporate the task distribution of *Kraft et al.* and *Silva et al.* as part of a test request distribution

system in order to gain the benefits of efficient testing.

Regarding claim 2, *Kraft et al.* further discloses executable program code, corresponding

to the [] request, is sent to multiple client systems (*see, e.g., Kraft et al.* at col. 7, lines 29-31).

Therefore, for reasons stated above, such a claim also would have been obvious.

Regarding claim 3, *Kraft et al.* further discloses retrieving a list of client system

identifiers, the client system identifiers indicating client systems to which executable program

code can be sent for [processing] (*see, e.g., Kraft et al.* at col. 7, lines 29-41). Therefore, for

reasons stated above, such a claim also would have been obvious.

Regarding claim 4, *Kraft et al.* discloses:

receiving executable code from a server system in a client data processing system (*see,*

e.g., Kraft et al. at col. 9, lines 1-27);

if the client data processing system is in an idle state when the executable code is

received, then sending a response to the server system, [processing] at least a portion of the

executable code, and sending [] results to the server system (*see, e.g., Kraft et al.* at col. 9, lines

1-35).

Kraft et al. discloses a task distribution process as described above, but fails to expressly

disclose the distributed task being a testing task. However, in a similar task distribution process,

Silva et al. teaches the distribution of testing tasks in order to achieve more efficient testing. *See,*

e.g., Silva et al. at col. 1, lines 22-48; col. 2, line 63, through col. 3, line 17. Therefore, it would

have been obvious to one of ordinary skill in the art at the time the invention was made to

incorporate the task distribution of *Kraft et al.* and *Silva et al.* as part of a test request distribution

system in order to gain the benefits of efficient testing.

Regarding claim 5, *Kraft et al.* further discloses if the client data processing system is not

in an idle state when the executable code is received, then no response is sent to the server and

no [processing] is performed (*see, e.g., Kraft et al.* at col. 9, lines 36-55). Therefore, for reasons

stated above, such a claim also would have been obvious.

Regarding claim 6, in addition to the teachings applied above, *Silva et al.* further teaches

the testing being a coverage analysis test (see, e.g., Silva et al. at col. col. 1, lines 22-48).

Therefore, for reasons stated above, such a claim also would have been obvious.

Regarding claim 7, *Kraft et al.* further discloses the client data processing system is in an

idle state when no user is actively operating the client data processing system (*see, e.g., Kraft et*

al. at col. 8, lines 47-67). Therefore, for reasons stated above, such a claim also would have been

obvious.

Regarding claims 8-21, these are data processing system and computer program product

claims substantially paralleling the limitations in claims 1-7. *Kraft et al.* further discloses the use

of such data processing systems and computer program products in implementing the prescribed

methods, *see, e.g., Kraft et al.* at Figures 3 and 4, and all other limitations have been addressed as

set forth above. Therefore, for reasons stated above, such claims also would have been obvious.

(10) Response to Argument

10.1   The Rejection of Claims 8-14 Under 35 U.S.C. § 112, 2nd Paragraph (Brief 16-18).

<u>Claims 8-10</u>

As noted above, this rejection has been withdrawn, and appellants' arguments are moot.

<u>Claims 11-14</u>

As noted in appellants' brief, although appellants appeal this ground of rejection, (Brief 12), they do not dispute the rejection of claims 11-14 based on the apparent omission of the word "receive" from claim 11. (Brief 18.) Accordingly, the rejection of claims 11-14 under § 112 should be summarily sustained.

10.2   The Rejection of Claims 1-21 Under 35 U.S.C. § 103(a) (Brief 19-28).

<u>Claims 1-3, 8-10, and 15-17</u>

A.   Receiving a test request

Appellants continue to misconstrue the rejection. (See Final Rejection at 5.) Kraft is not relied upon as teaching receiving a *test* request, but rather receiving a subtask as part of a distributed processing system. See, e.g., Kraft at col. 7, lines 9-41. Silva teaches that such distributed subtasks can be *test* requests as part of a distributed software testing system. See, e.g., Silva at col. 1, lines 22-48; col. 2, line 63, through col. 3, line 17.

B.   *Sending executable code*

The system of Kraft sends executable code (executable subtasks) to the clients. See, e.g.,

Kraft at col. 7, lines 9-28.

C.   *Receiving a response from the client system indicating that the client system will*
perform a test, and indicating that the client system was not being actively used when the
executable program code was sent.

The system of Kraft sends indications to the server (in the form of requesting new tasks

and sending results of previous tasks) when it is otherwise not being actively used (see decision

block 608 in Figure 6 (checking if the client system is idle)). Claim 1 requires that a response

from the client "indicate" that the client system will perform a test, and that the client was not

being actively used when the code "was sent". This does not absolutely require the indication

prior to sending or during sending, but instead may be read to include the time after sending is

complete. Likewise, there is no requirement that the indication be sent prior to testing, but only

that the indication correspond to an eventual testing from the point of view of the server. The

eventual execution of the subtask is affirmed when the client sends the results. Further, the

execution results indicate that at a time after the sending of the executable code that the client

was idle as this is a necessary condition for it to run the code. Additionally, the requesting of

new tasks by the client of Kraft is another indication that the client will perform another task

(claim 1 only requires indicating that the client will perform "a" test).

Thus, the system of Kraft meets the limitation of, *receiving a response from the client*

system indicating that the client system will perform a [task], and indicating that the client

system was not being actively used when the executable program code was sent, in at least two

ways: (1) the client actively requests new subtask only when it is otherwise idle (during a

screensaver operation) (see Kraft at Figure 6 (blocks 608, 609, 612); col. 9, lines 1-17); and (2)

the client sends results of subtasks, which indicates the capability of performing the requested

task (which in fact was completed) (see Kraft at Figure 6, block 622). Again, Silva teaches that

such a subtask could be a *test* as part of a distributed testing system. Silva at col. 1, lines 22-48;

col. 2, line 63, through col. 3, line 17.

Claims 4, 6, 7, 11, 13, 14, 18, 20, and 21

D.   *If the client data processing system is in an idle state when the executable code is
received, then sending a response to the server system, testing at least a portion of the
executable code, and sending test results to the server system.*

The operation of the Kraft system is tied to a screen saver that implements an idle time

activation program. See Kraft at Figure 6. As explicitly disclosed in Kraft, the subtask

computation occurs in the peripheral computers 106 during "idle" processing times. Kraft at col.

9, lines 37-38.   This idle time processing includes the processing of existing subtasks, the

sending of results, and the requesting of new subtasks. See, e.g., Kraft at col. 9, lines 1-35;

Figure 6.

Claims 5, 12, and 19

E.   *If the client data processing system is not in an idle state when the executable
code is received, then no response is sent to the server and no testing is performed.*

As noted above, the processing of existing subtasks, the sending of results, and the

requesting of new subtasks takes place during "idle" time of the peripheral computer. See, e.g.,

Kraft at col. 9, lines 1-35; Figure 6.   When the peripheral computer is being actively used, then

the screensaver of Kraft is not active and the functions of the idle time activation program are not

performed (except waiting for a new idle time to occur). See, e.g., Kraft at col. 9, lines 1-17

(describing processing steps for when the peripheral computer becomes idle); lines 39-55

(describing processing steps for when the peripheral computer becomes active, i.e., ceases to be

idle).

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related

Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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